

DISCIPLINARY ACTION

Private Admonition - Board Case No. 17, 2003. **Date of Sanction: February 16, 2004.** A panel of the Preliminary Review Committee ("PRC") offered the sanction of a private admonition to an attorney in Board Case No. 17, 2003, for violations of the Delaware Lawyers' Rules of Professional Conduct. The attorney consented to the imposition of the private admonition, with conditions, as offered by the PRC.

The disciplinary matter was opened based upon a report received by the Office of Disciplinary Counsel ("ODC") from the Lawyers' Fund for Client Protection ("LFCP"), which had conducted a random audit of the attorney's law office books and records. The report identified several areas of non-compliance with the requirements of Rule 1.15: **(a)** monthly listings of client balances in the client trust account and real estate trust account were prepared, but not totaled on a monthly basis; **(b)** because monthly client balance listings were not totaled on a monthly basis, the required monthly reconciliation of the total of the client balance listing with the reconciled end-of- month cash balance could not be (and was not) performed, and the attorney was not determining on a monthly basis whether there were negative balances or unidentified client funds; **(c)** there were, in fact, apparent unidentified client funds in both the client trust account and the real estate trust account; and **(d)** there were client accounts with old balances, including funds which should have been disbursed at least five years prior to the audit, totaling \$16,023.42. Most of the balances were recording/mortgage satisfaction fees. Subsequent follow-up audits by the LFCP also reflected that the attorney had failed adequately to monitor and resolve other aging outstanding checks written on the real estate trust account within the five years prior to the audit. Moreover, the Certificates of Compliance filed by the attorney in 1996 through and including 2002 stated that the attorney was in compliance with the various lawyer record keeping requirements noted for each year. Each of these Certificates contained incorrect responses to certain items on the Certificate.

In accepting the PRC's offer, the attorney consented to a private admonition for violations of **Rule 1.15(d) and former Interpretive Guideline No. 2** (setting forth detailed and specific requirements for the maintenance of attorneys' books and records and handling of practice-related funds); and, with regard to the incorrect responses on Certificates of Compliance for 1996 through 2002, **Rule 8.4(c)** (providing that it is professional misconduct for a lawyer to "engage in conduct involving ... misrepresentation") and **Rule 8.4(d)** (providing that "[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

The PRC considered the following mitigating factors: (1) the absence of any prior disciplinary record; (2) the attorney's cooperation with the ODC and the LFCP and full disclosure about the facts and circumstances involved; and (3) the attorney's remedial efforts to correct the deficiencies, including the ongoing retention of an experienced bookkeeper and the implementation of an effective computerized system for the maintenance of books and records. In aggravation, the PRC considered (1) the pattern of record keeping deficiencies and incorrect responses to items on the Certificates of Compliance over a number of years, and (2) the attorney's substantial experience in the practice of law.

The sanction of a private admonition also included the following conditions: (1) payment of ODC and LFCP costs; and (2) for 18 months following the imposition of this sanction, the attorney was required to provide semi-annual reporting from a certified public accountant to the ODC verifying the attorney's compliance with Rule 1.15.